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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/540,102	02/27/2006	John Paul Koke	D-43690-01	6442
7590 Scaled Air Corporation Law Department PO Box 646 Duncan, SC 29334				
EXAMINER				
TRUONG, THANH K				
ART UNIT		PAPER NUMBER		
3721				
MAIL DATE		DELIVERY MODE		
04/10/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/540,102

**Applicant(s)**

KOKE ET AL.

**Examiner**

THANH K. TRUONG

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4, 7, 8, 11, 13, 14, 16, 18, 21, 24, 29, 32, 34, 35 and 62 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7, 8, 11, 13, 14, 21, 24, 29, 32, 34 and 35 is/are rejected.
- 7) ☒ Claim(s) 18 and 62 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 June 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-846)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This action is in response to Applicant's amendment received on December 17, 2007.
2. Applicant's cancellation of claims 5, 6, 9, 10, 12, 15-17, 19, 20, 22, 23, 25-28, 30, 31, 33 and 36-61 is acknowledged.

### ***Drawings***

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the following limitations must be shown or the feature(s) canceled from the claim(s). No new matter should be entered: "the vacuum packaging machine is configured to load and unload product package concurrently" as recited in claim 29

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New

Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-4, 7, 8, 13, 14, 21, 29, 32, 34 and 35 rejected under 35 U.S.C. 103(a) as being unpatentable over Nixon, Jr. et al. (4,777,782) in view of Suga (2002/0083683).

Nixon discloses an apparatus comprising: a conveyor (12), and a vacuum chamber (24, 28), the vacuum chamber is arranged to receive at least two product packages to be vacuumed and sealed. The heat sealing assembly located between the products to be sealed and oriented transversely to the longitudinal direction of the conveyor.

Nixon discloses the claimed invention, but it does not expressly disclose that the heat sealing assembly including the cutting assembly.

Suga discloses an apparatus in which the sealing assembly (35, 36) includes the cutting assembly (51) so that the package is sealed and cutting at the same time.

Therefore, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have modified Nixon apparatus by

incorporating the sealing and cutting assembly as taught by Suga to provide an apparatus in which product packages can be sealed and cutting in a single operation.

The modified Nixon by Suga further discloses:

Regarding claims 2 and 3, wherein the heat sealing and cutting assembly comprises a pair of heat seal bars and heat seal anvils (the sealing member 24, 28 comprises at least a pair of heat seal bars and anvils – figure 2 of Nixon).

Regarding claim 4, wherein the heat sealing and cutting assembly comprises a cutting device (51) (figure 3 of Suga).

Regarding claim 7, wherein the heat sealing and cutting assembly is configured to form two heat seal lines between the two products and cutting between the two seal lines (figure 3 of Nixon – column 4, lines 22-26).

Regarding claim 8, an arrangement to clamp the portion of the package to be sealed prior to sealing and cutting the package (figure 3 of Suga).

Regarding claim 13, Figures 1-3 of Nixon clearly disclose the unsealed portion of the package being sealed to produce individual product package (14).

Regarding claim 14, wherein the conveyor is configured to deliver the product package directly into the vacuum chamber in the longitudinal direction (Nixon , figure 2).

Regarding claim 16, one or more chamber conveyor (12) (Nixon – figures 1 and 2).

Regarding claim 21, the apparatus which is indexed to align the portion of the product package between the two products with the heat sealing and cutting assembly (Nixon – figures 2-3).

Regarding claim 29, wherein the apparatus is configured to load and unload product packages concurrently (Nixon, figures 2-3 show that package is load and unload at the same time – as the products is loaded, the sealed package is unloaded).

Regarding claims 32, 34 and 35, it is construed that Suga discloses a wrapping or bagging machine (Suga – figure 1); and in both Nixon and Suga, the products are positioned at a predetermined spacing; it is also construed that both Nixon and Suga disclose apparatus that is fully capable of being programmable to vary the product package size as well a predetermined spacing; and it is further construed that as the product being wrapped or bagged (in Nixon and Suga) air is trapped with the product package when it is sealed.

6. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nixon, Jr. et al. (4,777,782) in view of Suga (2002/0083683) and the admitted prior art.

The Applicant had not previously properly challenged the Official Notice taken by the examiner (in the Office Action date August 13, 2007). In general, a challenge, to be proper, must contain adequate information or argument so that *on its face* it creates a reasonable doubt regarding the circumstances justifying the Official Notice. Since the Applicant fails to properly challenge the Official Notice during examination, the Applicant's right to challenge the Official Notice is waived, and the subject matter recited in claim 24 is considered as Applicant's admitted prior art.

As mentioned above, the modified Nixon by Suga discloses the claimed invention, but it did not expressly disclose a sensor as recited in claim 24.

It is old and well known in the art (the admitted prior art) to use sensor to sense the product's present on the production line or the position of the product on the conveyor. The sensor provides an effective means to locate the product and thus providing an effective means to control the production process.

Therefore, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have further modified the apparatus of Nixon and Suga by incorporating the use of sensor as recited in claim 24 to provide an effective means to locate the product and thus providing an effective means to control the production process.

7. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nixon, Jr. et al. (4,777,782) in view of Suga (2002/0083683) and further in view of Glandon et al. (4,779,398).

As discloses above, the combination of Nixon and Suga discloses the claimed invention, but it does not expressly disclose a puncturing device to evacuate the air form the package before sealing and cutting.

Glandon discloses that it is old and well known to use puncturing device to evacuate air form the package before the package is sealed and cut (column 6, lines 19-21).

Therefore, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have modified the combination of Nixon and

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Suga apparatus by incorporating the puncturing device as taught by Glandon to evacuate air from the package.

**Allowable Subject Matter**

8. Claims 18 and 62 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

**Response to Arguments**

9. Applicant's arguments filed December 17, 2007 have been fully considered but they are not persuasive.

10. In response to the Applicant's argument that:

*"Applicants traverse this rejection to the extent it may be applied to claim 1 as amended. Claim 1 as amended requires an in-feed conveyor, as well as one or more chamber conveyors, the chamber conveyors disposed in the vacuum chambers. These conveyors are clearly distinct from one another, and serve distinct functions in the operation of the presently claimed invention. Nixon, Jr. et al. disclose a conveyor 12, shown in Figures 1 and 2. They do not appear to show any other conveyors. If the conveyor 12 of Nixon is regarded as an in-feed conveyor for purposes of patentability analysis, it does not show discrete conveyor(s) in the vacuum chamber, distinct from this in-feed conveyor. If conveyor 12 of Nixon is regarded as a chamber conveyor, it does not show a discrete in-feed conveyor" (emphasis added),*

this is not found persuasive for the following reasons:

Applicant misinterprets the principle that claims are interpreted in the light of the specification. Although the element "discrete conveyor" or "discrete in-feed conveyor" is found as example or embodiment in the specification, it was not claimed explicitly. Nor were the words that are used in the claims defined in the specification to require these limitations. A reading of the specification provides no evidence to indicate that these

limitations must be imported into the claims to give meaning to disputed terms.

*Constant v. Advanced Micro-Devices, Inc.*, 7 USPQ2d 1064.

Furthermore MPEP 2106 [R-6] clearly stated the following:

"USPTO personnel are to give claims their broadest reasonable interpretation in light of the supporting disclosure. *In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997). Limitations appearing in the specification but not recited in the claim should not be read into the claim. *E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364, 1369, 67 USPQ2d 1947, 1950 (Fed. Cir. 2003) (claims must be interpreted "in view of the specification" without importing limitations from the specification into the claims unnecessarily). *In re Prater*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-551 (CCPA 1969). See also *In re Zletz*, 893 F.2d 319, 321-22, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) ("During patent examination the pending claims must be interpreted as broadly as their terms reasonably allow.... The reason is simply that during patent prosecution when claims can be amended, ambiguities should be recognized, scope and breadth of language explored, and clarification imposed.... An essential purpose of patent examination is to fashion claims that are precise, clear, correct, and unambiguous. Only in this way can uncertainties of claim scope be removed, as much as possible, during the administrative process.") (emphasis added).

Accordingly, it is construed that Nixon clearly discloses the conveyor portions as follow: the in-feed conveyor (the conveyor portion disposed before the vacuum chamber), and the chamber conveyor (the conveyor portion located within the vacuum chamber).

### **Conclusion**

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to THANH K. TRUONG whose telephone number is (571)272-4472. The examiner can normally be reached on Mon-Fri 9:00AM - 5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

tkk  
April 8, 2008.

/Thanh K Truong/  
Primary Examiner, Art Unit 3721.